IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CUSTOMS REFERENCE NO.1 OF 1999

The Collector of Customs .. Applicant.
V/s.
M/s.Rameshchandra Ramniklal
& Co. & Others .. Respondents.

Mr.P.S. Jetly with Mr.A.S. Rao & Mr.Y.R. Mishra for the applicant.

Mr.Vikram Nankani with Mr.Madhur Baya & Mr.Mohan Salian i/b. Gagrat & Co. for respondent Nos.1 & 3.

Mr.I.P. Bagaria for respondent No.5.

CORAM : V.C. DAGA &
J.P. DEVADHAR, JJ.

DATED : 11TH OCTOBER, 2005.

P.C. :

1. This is a reference at the instance of the Revenue, in exercise of powers under Section 130(1) of the Customs Act to seek opinion of this Court on the question of law formulated by the Revenue and modified by the Customs, Excise and Gold (Control) Appellate Tribunal, West Regional Bench, Bombay ('Tribunal' for short) arising out of the order of the Tribunal bearing order 609 to 622/91 dated March 21, 1991. The question of law reads thus :

> Whether the decision of the Supreme Court in M/s.Vijay Kumar & Co. (Civil Appeal Nos.4445 to 4446 of 1988 decided on 16.12.1988-1991(1) SCALE 33 is applicable to all importers who acquired additional licences, under the directions of the

Supreme Court, in Union of India Vs. M/s.Rajnikant Brothers (Civil Appeal No.1423/1984 decided on 18.04.1985 and whether the said decision and the decisions of Hon'ble Bombay High Court based on the said decision, lay down the law and have binding effect on all such importers ?

2. Considering the consensus between the parties present before the Court, it is not necessary to go into the factual scenario, Mr.Nankani and Mr.Bagaria appearing for respondent Nos.1,3 and 5 and Mr.Jetly appearing for the Revenue, during the course of hearing, jointly submitted that during the pendency of this reference, the judgment of the Apex Court in the case of B. Vijay Kumar & Co. Collector reported in [1991(1) SCALE 33] has been over-ruled by the Apex Court in the case of Collector of Customs V/s. M. Shashikant & Co. (1992) 57 ELT 684].

3. In the above view of the judgment of the Apex Court, the very basis of the judgment and order of the Tribunal giving rise to the present reference stands removed. Consequently, counsel appearing for both sides submitted that the question referred be answered in favour of the Revenue in view of the Apex Court judgment in M. Shashikant & Co. (supra) keeping all questions open for being considered by the Tribunal including the question dehorse the decision in the case of M. Shashikant & Co., (supra) since the question as to the waiver of redemption

fine and penalty in the facts of each case has not been considered by the Tribunal inspite of specific contentions raised in that behalf since at the relevant time judgments of the Bombay High Court in the case of Dimexon V/s. Union of India [1989 (44) ELT 226 (Bom.)] and D. Navinchandra & Co. V/s. Union of India [1989 (43) ELT 266 (Bom.)] which were in favour of the respondents were holding the field.

4. The submissions made need acceptance. In the result, the question referred to us is answered in favour of the Revenue making it clear that while giving effect to the order passed in this reference it will be open to the respondents to agitate all other issues raised in the appeal to contend that inspite of the judgment of M. Shashikant & Co. their imports are legal and valid.

5. At this stage, it is made clear that the respondents, who inspite of service are absent shall also be governed by this order since there cannot be separate findings in their cases in view of the answer to the question referred.

6. The reference, accordingly, stands disposed of in terms of this order with no order as to costs.

(J.P. DEVADHAR, J.) (V.C. DAGA, J.)